UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,845	06/15/2001	Doug Grumann	10002695-1	8777

7590 06/22/2005	EXAMINER
HEWLETT-PACKARD COMPANY	TRUONG, LECHI
Intellectual Property Administration	

ART UNIT	PAPER NUMBER
2194	

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DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/882,845	Applicant(s) GRUMANN, DOUG
	Examiner LeChi Truong	Art Unit 2126

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>08 April 2005</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-26</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-26</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

       1.☐ Certified copies of the priority documents have been received.

       2.☐ Certified copies of the priority documents have been received in Application No. _____.

       3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

    a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: .

DETAILED ACTION

1.   Claims 1-26 are presented for examination.

Claim Objections

Claim 9 is objected to because of the following informalities: The spelling of the word"

cquiring" is not correct. Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. .101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

2.   Claims 1 -13 are rejected under 35 U.S.C. 101 because they are directed to non-statutory

subject matter.

3.   Claims 1 and 12 are directed to method steps, which can be practiced mentally in

conjunction with pen and paper, therefore they are directed to non-statutory subject

matter. Specifically, as claimed, it is uncertain what performs each of the claimed

method steps. Moreover, each of the claimed steps, inter alia, providing, adjusting and

computing, can be practiced mentally in conjunctions with pen and paper. The claimed

steps do not define a machine or computer implemented process (see MPEP 21061.

Therefore, the claimed invention is directed to non-statutory subject matter. (The

examiner suggests applicant to change "method" to "computer implemented method" in

the preamble to overcome the outstanding 35 U.S.C. 101 rejection).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims **1-3, 5-15, 17-26** are rejected under 35 U.S.C. 103(a) as being unpatentable over

Dumarot et al (US. Patent 6,059,842) in view of Rehkopf (US. Patent 6,505,249 b1).

5.   **As to claim 1**, Dumarot teaches the invention substantially as claimed including:

electronically deriving relationships (the optimizer contains rules 330, 341, 351 that it uses to

makes such optimizations 330, 340 and recommendations 350. For example, If A1=yes, and S1

=200 MHz, or Mi=90%, then make suggestion and change the graphic card settings that control

"synchronization on vertical refresh", col 7, ln 25-35/ comparing actual system/ application

setting with recommend setting, col 7, ln 5-16), over time (changes to system and application

configurations at different points in time, col 7, ln 10-16/ at specific increments of time, col 5, ln

10-17), monitored variable/ performance (dynamically monitoring system behavior an

performance, col 3, ln 16-22/ the optimizer 136 monitors system 12 behavior/ col 5, ln 47-55/

optimizer 136 gathers relevant system information/ relevant application information, col 5, ln 30-

46), X a number of rules based on said derived relationship(the optimizer contains rules 330,

341, 351 that it uses to makes such optimizations 330, 340 and recommendations 350. For

example, If A1=yes, and S1 =200 MHz, or Mi=90%, then make suggestion and change the

graphic card settings that control "synchronization on vertical refresh", col 7, ln 25-35/ if A and B are true and C is false then make suggestion and take action, col 7, ln 30-35), number of rules are generated without requiring human interaction (a rule may be: if A1= yes, S1=200 MHz or M1 = 90%, the rules is if A and B are true then C is false, col 7, ln 27-30/ ln 33-36).

6.   Dumarot does not teach automatically, generated without requiring human interaction. However, Rehkopf teaches automatically, generated without requiring human interaction (the software would automatically change the value of the floating variable, run the test and record in the matrix the performance indicator value and performance variable values, col 7, ln 1-5 and ln 11-16 col 6, ln 60-63/ col 2, ln 55-58).

7.   It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Dumarot and Rehkopf because Rehkopf's automatically, generated without requiring human interaction would improve the efficiency of Dumorot's system by allowing automatic software manipulation to establish the relationship between the performance variables and the system performance to optimize the hardware and software configuration.

8.   **As to claim 2,** Dumarot teaches at least in part on a performance goal (optimizing software, col 3, ln 10-45/ optimizing system performance, col 4, ln 56-67/col 5, ln 1-25/ col 6, ln 7-55/ col 7, ln 1-67/ col 8, ln 8-57).

9.   **As to claim 3,** Dumarot teaches part on current values of said system variable (a set of control parameters A1, A2, col 4, ln 56-67/col 5, ln 1-25/ col 7, ln 1-67/ color 570, col 8, ln 7-60), recommend (recommendation 350, col 7, ln 1-67).

10.   **As to claim 5,** Dumarot teaches acquired data (values M1, M2.. is obtained, col 5, ln 1-

25).

11.   **As to claim 6,** Dumarot teaches data over time (specific increments of time, col 5, ln

1025), gathering said data (the information gathered, col 7, ln 1-67), logging/ logged data

(threshold distance/ (X1, X2), col 9, ln 1-40), relationship (X1, Y1, col 9, ln 1-40).

12.   **As to claim 7,** Dumarot teaches discrete points in time (different points in time, col 7, ln

1-67).

13.   **As to claim 8,** Dumarot teaches an event (system behavior, col 5, ln 1-25).

14.   **As to claim 9,** Dumarot teaches performance of metric data (performance, col 5, ln 1-25).

15.   **As to claim 10,** Dumarot teaches identifying a number of applications (a particular

unique identifier 410 for a software application, col 4, ln 56-67/ col 5, ln 1-25).

16.   **As to claim 11,** Dumarot teaches variable (parameter, A1, A2.., col 4, ln 56-67) , the

performance of said computer (increasing the apparent speed of computer, col 3, ln 9-15).

17.   **As to claim 12,** it is an apparatus claim of claim 1; therefore, it is rejected for the same

reason as claim 1 above.

18.   **As to claim 13,** Dumarot teaches performance metrics (performance, col 5, ln 1-25).

19.   **As to claim 14,** it is an apparatus claim of claim 1; therefore, it is rejected for the same

reason as claim 1 above.

20.   **As to claim 15,** Dumarot teaches performance goal (performance, col 5, ln 1-25).

21.   **As to claim 17,** it is an apparatus claim of claim 5; therefore, it is rejected for the same

reason as claim 5 above.

22.   **As to claim 18,** Dumarot teaches a configuration file (amount of memory, col 5, ln 1-25).

23.   **As to claim 19**, Dumarot teaches monitoring (monitor program 137, col 5, ln 1-67).

24.   **As to claims 20-26**, they are apparatus claims of claims 9-10, 1, 5, 6; therefore, they are

rejected for the same reasons as claims 9-10, 1, 5, 6 above.

25.   Claims **4, 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et

al (US. Patent 6,059,842) in view of Rehkopf (US. Patent 6,505,249 b1), as applied to claim 1

above, and in view of Mihata (design rule verifying system).

26.   **As to claim 4**, Dumarot and Rehkopf do not teach iterative. However, Mihata teaches

iterative (the contradictory design rule are repeated, page 1).

27.   It would have been obvious to one of the ordinary skill in the art at the time the invention

was made to combine the teaching of Dumarot, Rehkopf and Mihata because Mihata's iterative

would improves the efficiency of Dumarot and Rehkopf's systems by allowing the system to

repeat the prior step of the correcting work.

28.   **As to claim 16**, it is an apparatus claim of claim 4; therefore, it is rejected for the same

reason as claim 4 above.

Conclusion

    Any inquiry concerning this communication or earlier communications from the

examiner should be directed to LeChi Truong whose telephone number is (703) 305 5312. The
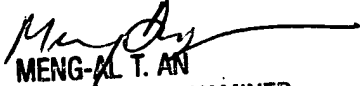
examiner can normally be reached on 8 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Meng-Ai An can be reached on 703-305-9678. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR of Public PAIP. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIP

system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

LeChi Truong

June 16, 2005

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